

## REMARKS

The Office action mailed January 26, 2007 has been received and reviewed. All pending claims stand rejected. The application is to be amended as previously set forth. All amendments and claim cancellations are made without prejudice or disclaimer. No new matter has been added. Reconsideration is respectfully requested.

### **A. Personal Interview:**

Applicants would like to thank the Examiner and his supervisor for the courtesy extended to applicants' representatives at the personal interview of April 3, 2007. During the interview, the invention and pending claims generally were discussed, as were possible amendments to the claims to clarify the claims and overcome the outstanding rejections.

Applicants' representative believes that the foregoing, together with the instant Amendment adequately describes the substance of the interview. If, however, the Office would like further information, the Examiner is kindly requested to contact applicant's undersigned representative, and further detail will be promptly provided.

### **B. Election/restrictions**

Claims 21, 25-29, and 42-56 were withdrawn as being drawn to a non-elected invention. As discussed at the interview, these claims are method claims that depend upon or otherwise include all the limitations of the corresponding product claims, and applicants thus respectfully request rejoinder of these non-elected claims once the product claims are found allowable. M.P.E.P., § 821.04. To expedite prosecution, withdrawn method claims 21, 25, 26, 29, 45, 52 and 56 are amended herein to parallel the language of the product claims that are amended.

### **C. 35 USC § 112**

Claims 1, 7, 9, 20, and 41, and therefore dependent claims 8, 10-19, and 30-40 stand rejected under 35 USC § 112, second paragraph, for allegedly being indefinite. Although applicants respectfully disagree, claims 1, 7, 9, 20 and 41 are amended herein in order to expedite prosecution.

Specifically, claim 1 stood rejected for reciting "wherein the eukaryotic cell is of a human

embryonic retinoblast origin". Claim 1 has been amended to recite "wherein the eukaryotic cell is a human embryonic retinoblast that has been immortalized by introduction therein of said first and said second nucleotide sequences". Basis for the amendment can be found, for instance, in paragraph [0014] of the application. It is submitted that this recitation is clear and definite, and reconsideration is respectfully requested.

Claim 7 stood rejected for reciting "wherein the first and second nucleotide sequences encoding the adenoviral E1A and E1B proteins are integrated in the genome of the eukaryotic cell and are derived from nucleotides 459-3510 (SEQ ID NO: 33) of an adenovirus 5 genome". Claim 7 has been amended to recite "wherein the first and second nucleotide sequences encoding the adenoviral E1A and E1B proteins are integrated in the genome of the eukaryotic cell and comprise the sequence of nucleotides 459-3510 (SEQ ID NO: 33) of an adenovirus 5 genome". It is submitted that the amended recitation is clear and definite, and reconsideration is respectfully requested.

Claim 9 was rejected for reciting "wherein the eukaryotic cell is of a cell as deposited under ECACC no. 96022940 origin". As suggested during the interview, claim 9 has been amended to make it independent. Claim 9 as amended now recites "...wherein the eukaryotic cell is a cell as deposited under ECACC no. 96022940 further comprising in its genome a recombinant nucleotide sequence in expressible format encoding the protein of interest". The claim no longer recites "origin", and it is submitted that the amended claim is certainly clear and definite, and reconsideration is respectfully requested.

Claims 20 and 41 were rejected for reciting "wherein the suitable medium is free of animal- or human-derived serum and animal- or human-derived serum components". As discussed at the interview, applicants respectfully disagree that the terms "animal- or human-derived serum" and "animal or human-derived serum components" would be unclear, and traverse on the basis that these terms are clear and understood in the art, since the skilled person will know that serum can be derived from blood of animals or humans by known methods. Any serum or serum component that has been present in an animal or human, and derived therefrom by preparing serum from the blood of such animal or human, is therefore encompassed by this term, as is fully clear to the skilled person. It is therefore respectfully submitted that the recitation "wherein the medium is free of animal- or human-derived serum and animal- or

human-derived serum components" is clear and definite, and reconsideration is respectfully requested.

Claims 20 and 41 have been amended to remove the recitation "suitable", as suggested during the interview. The same has been done for claims 20, 21, 29, 39, and 56.

The recitation "functional derivative" has been deleted from claims 14, 35, 45 and 52, as suggested during the interview.

The recitation "allowing" has been removed from (withdrawn) claim 21, so that it now recites "expressing the protein of interest", as suggested during the interview.

Claim 26 has been made independent, as was done for corresponding product claim 9 as suggested during the interview.

In view of the amendments and analysis presented herein, and the indications of the Examiner and his supervisor during the interview, applicants believe that the claims are clear and definite, and fulfill the requirements of 35 USC § 112. Reconsideration is therefore respectfully requested.

#### **D. Provisional Obviousness-type Double Patenting**

Several of the claims stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims of co-pending application numbers 10/499,298, 11/593,279 and 11/593,280. Although applicants do not agree with the provisional rejections, in order to expedite prosecution, applicants are willing to submit appropriate terminal disclaimer(s). However, in view of the discussion at the interview that a further search would be conducted in this regard (e.g., for applications of the assignee hereof) upon the aforementioned rejoinder of the withdrawn method claims, applicants respectfully request that these rejections be held in abeyance until this further search has been conducted, and the provisional rejection(s) remain the only rejections in the application, so that a single terminal disclaimer may be filed.

It is respectfully submitted that the application is allowable, and a notice of allowance is kindly solicited. As understood by applicants' representatives during the interview, it appeared the view of the Examiner and his supervisor that the claims as currently amended would be

allowable. If questions remain after consideration of the foregoing, however, the Office is kindly requested to contact applicants' attorney at the address or telephone number given herein.

Respectfully submitted,



Allen C. Turner  
Registration No. 33,041  
Attorney for Applicants  
TRASKBRITT, P.C.  
P.O. Box 2550  
Salt Lake City, Utah 84110-2550  
Telephone: 801-532-1922

Date: April 10, 2007